IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

TUESDAY, THE 30TH OCTOBER 2007 / 8TH KARTHIKA 1929

WP(C).No. 33018 of 2006(E)

PETITIONER:

SR.THRESIAMMA ANTONY @ SR.LIZA MARTIN,
LECTURER SELECTION GRADE (RETIRED),
DEPARTMENT OF PHYSICS, ALPHONSA COLLEGE PALAI,
RESIDING AT FCC PROVINCIAL HOUSE, SAN DAMIANO,
PULIYANOOR P.O. PALA, KOTTAYAM.

BY ADV. SRI.B.MOHANLAL

RESPONDENTS:

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1. STATE OF KERALA REPRESENTED BY ITS
SECRETARY TO GOVERNMENT, HIGHER EDUCATION
DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM.

2. THE DEPUTY DIRECTOR OF COLLEGIATE
EDUCATION, KOTTAYAM.

3. THE MAHATMA GANDHI UNIVERSITY
REPRESENTED BY ITS REGISTRAR, PRIYADARSHINI HILLS,
KOTTAYAM.

BY ADV. SRI. T.A. SHAJI, SC, M.G.UNIVERSITY
GOVERNMENT PLEADER SMT. SUDHA DEVI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 30/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1- THE TRUE COPY OF THE ORDER NO.A.C. BV.2.133/99 DATED 2.3.00 ISSUED BY THE MAHATMA GANDHI UNIVERSITY

EXT.P2- TRUE COPY OF THE ORDER NO.A.C.B.V.2/843/05 DATED 30.6.05 ISSUED BY THE MAHATMA GANDHI UNIVERSITY

EXT.P3- THE TRUE COPY OF THE ORDER NO.C4-7306/05 DATED 20.1.06 ISSUED BY THE 2ND RESPONDENT TO THE THIRD RESPONDENT

EXT.P4- TRUE COPY OF THE G.O.(MS) NO.209/96/H.Edn DATED 24.12.96

EXT.P5- TRUE COPY OF THE RDER NO.A.C.B.V.1-798-05 DATED 19.12.05 ISSUED BY THE THIRD RESPONDENT

EXT.P6- TRUE COPY OF THE COMMUNICATION DATED 29.11.06 ISSUED BY THE PRINCIPAL, ALPHONSA COLLEGE PALA TO THE SECOND RESPONDENT

(TRUE COPY)

P.A TO JUDGE

S.SIRI JAGAN,J

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W.P.(C).No.33018 of 2006

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Dated this the 30th day of October, 2007

JUDGMENT

The petitioner retired from service as a Selection Grade Lecturer on 31.05.2006. The grievance of the petitioner is that although by Ext.P1 order the petitioner was granted Senior Scale with effect from 01.06.1995 and by Ext.P2 Selection Grade with effect from 27.07.1998 petitioner has not been disbursed salary in the promoted post of Lecturer Selection Grade. This is apparently on the basis of Ext.P3 order whereby a doubt has been raised as to the right of the petitioner to get Selection Grade from the date when it was sanctioned. Petitioner therefore seeks the following reliefs:

i) “issue a writ of mandamus or other appropriate writ order of direction commanding the 2nd respondent to disburse the revised UGC scale to the petitioner in the promoted post of Lecturer Selection Grade with effect from 27.07.98 covered as per Ext.P2 within a stipulated time as directed by this Hon'ble court.

ii) To declare that the petitioner is entitled to get UGC pay revision and salary arrears to the post of Lecturer Selection Grade with effect from 27.7.98 covered as per Ext.P2.

iii)To issue a writ of mandamus or other appropriate writ order or direction commanding the 3rd respondent to reconsider Ext.P2 in view of Ext.P3 and in the light of Ext.P3 to P6 and direct the 2nd respondent to disburse the salary to the post of Lecturer Selection Grade to the petitioner within a stipulated time as directed by this Hon'ble court in view of the dictum laid down 1998(3) ILR page 1 in Cheriyan Mathew Vs. the Principal S.B. College and 2003(2) KLJ page 189 in Jayaprasad Vs. State of Kerala."

2. The petitioner before starting his regular service with effect from 01.06.1995 had broken periods of temporary services as follows:

21.08.1981 - 31.03.1982
01.04.1982 - 23.12.1982
24.12.1982 - 22.12.1985
23.12.1985 - 22.03.1986
16.06.1986 - 12.09.1986
24.09.1986 - 20.03.1987
21.03.1897 - 30.03.1987
22.06.1987 - 22.07.1987
23.07.1987 - 31.07.1987
15.09.1987 - 11.03.1988
12.07.1988 - 19.08.1988
05.09.1988 - 10.03.1989
22.09.1989 - 09.03.1990
20.06.1991 - 19.12.1991
01.07.1993 - 31.12.1993
11.01.1994 - 28.01.1994

3. Taking into account these broken periods of services also petitioner has been granted Senior Scale with effect from 01.06.1995. Thereafter, Ext.P2 order was passed granting him Selection Grade with effect from 27.07.1998 apparently reckoning the broken periods of service as above also. Now the benefit of the Selection Grade promotion is sought to be denied to the petitioner on the ground that the broken periods of Service cannot now be reckoned.

4. The learned Government Pleader submits that after the earlier Government Order granting U.G.C. benefits was replaced by G.O.(P).No.171/99/H.Edn dated 21.12.1999, only prior continuous service of not less than one year can be reckoned for the purpose of granting Senior Scale and Selection Grade. The Second is that the broken period of services shall be followed by regular service. I am of the opinion that both these contentions defies logic since the petitioner has already been granted Senior Scale before the new Government Order came into force. That benefit already given legally as per the Government Order in force at the relevant time, the right for which has already been upheld by this Court in several judgments. The same cannot now be taken away on the basis of the new Government Order. After stating that the broken

periods also would be counted for the purpose of Senior Scale and Selection grade there is no logic in stating that for getting that benefit broken periods should be followed by regular service in the sense that the broken service and regular service shall be without break. The very words 'broken service' themselves postulate that it cannot be followed by regular service. Regular service can only be after the broken periods of service are terminated and there cannot be any continuity between the broken periods of service and the regular service. If the contentions of the Government Pleader are to be accepted, it would have the effect of even taking away the Senior scale already granted to him as per the Government Order in force at the relevant time.

However, I find merit in the contentions of the learned Government Pleader that in such case the petitioner's right can be computed only in accordance with the 1990 Government Order. The petitioner cannot get the broken service of less than one year also counted and at the same time seek the reduced qualifying service as per the 1999 Government Order. In the above circumstances, the writ petition is disposed of directing the respondents to compute the eligibility of the petitioner both for Senior scale and Selection Grade taking into account the

broken periods of service in accordance with the 1990 Government Order and disburse the arrears of salary and retirement benefits accordingly. The orders in this regard shall be passed within one month from the date of receipt of a copy of this judgment.

S.SIRI JAGAN, JUDGE

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